

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 92962-001

v

Blue Cross Blue Shield of Michigan
Respondent

_____/

**Issued and entered
this 20th day of November 2008
by Ken Ross
Commissioner**

ORDER

**I
PROCEDURAL BACKGROUND**

On August 29, 2008, XXXXX authorized representative of XXXXX ("Petitioner") filed a request for external review with the Commissioner of the Office of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on September 8, 2008.

The Commissioner notified Blue Cross Blue Shield of Michigan ("BCBSM") of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on September 17, 2008.

The issue in this external review can be decided by a contractual analysis. The contract here is the BCBSM *Community Blue Group Benefits Certificate* ("the certificate"). The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II FACTUAL BACKGROUND

Under the terms of the Petitioner's health care coverage, there is no deductible when covered services are received from "panel providers," i.e., certain health care professionals and facilities who have agreed to provide services to BCBSM members under the certificate. Services received from nonpanel providers are generally subject to a deductible and copayment.

The Petitioner went to the emergency room of XXXXX Hospital on August 14, 2007 and was later admitted as an inpatient. BCBSM applied a \$250.00 deductible and a 20% copayment to some of the care she received since it was provided by a non-panel doctor.

The Petitioner appealed BCBSM's decision to apply non-panel deductible and copayment to the BCBSM approved amounts. BCBSM held a managerial-level conference on August 13, 2008, and issued a final adverse determination dated August 14, 2008.

III ISSUE

Did BCBSM correctly apply non panel deductible and copayments to Petitioner's care?

IV ANALYSIS

Petitioner's Argument

On August 14, 2007, the Petitioner was seen on an emergency basis at XXXXX Hospital. She had experienced complications during a pregnancy and collapsed. She was later diagnosed with deep vein thrombosis. The clotting was such that when she tried to get up her blood pressure would drop and she would lose consciousness. Moving her to another hospital was out of the question because a piece of the clot could have blocked her heart or brain.

The only attending emergency room physician available at the hospital was not a BCBSM panel member. This doctor decided the Petitioner's condition warranted an admission to the

hospital.

Since the hospital is an approved BCBSM PPO facility the Petitioner was confident that all medical services rendered there would be processed at the in-network level. Later, she received a bill from the doctor that indicated a balance owed.

The Petitioner is requesting that BCBSM waive the higher out-of-network charges since her care was provided on an emergency basis and she had no choice of doctors.

BCBSM's Argument

BCBSM says that the certificate provides for a \$250.00 deductible and 20% copayment for services provided by a nonpanel doctor. There are four circumstances where nonpanel cost sharing requirements are waived:

- 1) A panel provider refers a member to a non panel provider;
- 2) The member receives a service for the initial exam to treat a medical emergency or accidental injury in the outpatient department of a hospital; urgent care center or physician's office;
- 3) The member receives services from a provider for which there is no PPO panel provider;
- 4) The member receives services from a non panel provider in a geographic area of Michigan deemed a "low access area" by BCBSM for the particular specialty.

The Petitioner argues that no nonpanel sanction should have been applied to her care because the services were provided on an emergency basis. However, the nonpanel sanctions are only waived for the initial exam for a medical emergency. BCBSM believes that it processed the Petitioner's claims correctly. No deductible was applied to the initial outpatient consultation provided on August 14, 2007. Nonpanel sanctions were applied to procedure codes 99222 and 99239. Procedure 99222 is initial inpatient care and procedure 99239 is a hospital discharge consultation. Neither of these procedures is part of the initial emergency room examination and, therefore, both are subject to the nonpanel sanctions. BCBSM approved \$131.19 for procedure 99239 and applied this amount to the nonpanel deductible. BCBSM approved \$143.57 for procedure 99222 and applied \$118.81 to the deductible, then applied a 20% copayment, leaving a

balance of \$19.81 which was paid to the provider. The total non panel sanction for the two procedures was \$254.95.

BCBSM believes it processed the Petitioner's claims in accordance to the terms of the certificate.

Commissioner's Review

The certificate requires the Petitioner to pay a \$250.00 deductible and 20% copayment when nonpanel providers are used. The certificate also says that the nonpanel deductible will apply unless the services fall under one of four circumstances described above. The Petitioner argues that since her services were for an emergency no sanction should have been applied. However, the emergency waiver in the certificate applies only to the initial examination to treat the emergency in the outpatient setting. The sanctions are not waived for subsequent care as an inpatient in the hospital. BCBSM did not apply sanctions to her care in the emergency room but properly applied sanctions to her subsequent care as an inpatient.

The Commissioner finds that BCBSM is not required to waive the sanctions applied to procedure codes 99222 and 99239 since they were not part of the initial examination to treat the Petitioner's medical emergency (no information was provided that any of the other waiver provision applied).

**V
ORDER**

BCBSM's final adverse determination of August 14, 2008, is upheld.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.